

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 93-100

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Cleveland and Ebenezer,
Mississippi)

RM-8175

NOTICE OF PROPOSED RULE MAKING

Adopted: March 29, 1993; Released: April 20, 1993

Comment Date: June 11, 1993

Reply Comment Date: June 28, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed jointly by Radio Cleveland, Inc. ("Radio Cleveland") and James L. Haffey d/b/a JimBar Enterprises ("JimBar"), requesting the substitution of Channel 280C3 for Channel 280A at Cleveland, Mississippi, and deletion of Channel 280A at Ebenezer, Mississippi. Radio Cleveland and JimBar submitted information in support of the proposal. Radio Cleveland expressed its intention to apply for Channel 280C3 at Cleveland.

2. We believe the public interest would be served by consideration of the proposal. Radio Cleveland, licensee of Station WCLD-FM, Cleveland, Mississippi, requests the substitution of Channel 280C2 for Channel 280A and modification of its license to specify operation on the higher class channel. A Commission engineering analysis indicates that Channel 280C3 can be allotted to Cleveland in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 280A at Ebenezer is deleted.¹ JimBar, permittee of Station WZBR-FM, Channel 280A, has requested that its construction permit for Ebenezer be cancelled and the channel deleted.² In support of its request for cancellation of the construction permit, JimBar has determined that Ebenezer, an unincorporated community with a 1984 estimated population of 150, cannot feasibly support a new FM station in

light of the current economic conditions.³ We shall propose to modify the license for Station WCLD-FM, Channel 280A, to specify operation on Channel 280C3 in accordance with section 1.420(g) of the Commission's Rules.

3. We shall also seek comments as to whether we should delete Channel 280A at Ebenezer to accommodate the upgrade at Cleveland. Channel 280A was allotted to Ebenezer in MM Docket 89-324. See 5 FCC Rcd 682 (1990). Since the Commission has cancelled JimBar's construction permit, the channel is considered vacant. If, however, comments are filed during the comment cycle in this proceeding stating an intention to file an application for the channel, upon termination of this proceeding a filing window will be opened for Channel 280A at Ebenezer.⁴ If no interest is expressed in retaining the channel, we shall delete the channel at Ebenezer. It is Commission policy not to delete a channel in which interest has been expressed. Should it later appear, however, that there is undue delay in activating the channel in Ebenezer, we would consider a further petition to remove the channel at Ebenezer, Mississippi, to accommodate expanded service at Cleveland. See *Billings & Lewistown, Montana*, 6 FCC Rcd 3632 (1991).

4. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following communities:

OPTION I

City	Channel No.	
	Present	Proposed
Cleveland,	224A, 252C3,	224A, 252C3,
Mississippi	280A ⁵	280C3
Ebenezer,		
Mississippi	280A	---

OPTION II

Cleveland,	224A, 252C3,	224A,
Mississippi	280A	252C3, 280A
Ebenezer,		
Mississippi	280A	280A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

¹ The coordinates for Channel 280C3 at Cleveland are 33-43-59 and 90-41-38.

² On January 7, 1993, JimBar Enterprises filed a letter with the Commission requesting cancellation of the construction permit for Station WZBR-FM, Ebenezer, Mississippi (File Nos. BPH-900424ME, BMPH-9201161O). The Commission granted JimBar's request on March 23, 1993.

³ The 1992 *Rand McNally Commercial Atlas* indicates Ebenezer

has its own post office and zip code and credits it with a population of 100.

⁴ A Commission engineering analysis indicates Channel 280A is the only channel available for allotment at Ebenezer.

⁵ Larry G. Fuss has proposed the substitution of Channel 225C2 for Channel 224A in MM Docket 92-157. See 7 FCC Rcd 4840 (1992).

6. Interested parties may file comments on or before **June 11, 1993**, and reply comments on or before **June 28, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Frank R. Jazzo
Fletcher, Heald & Hildreth
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22079

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.